

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6721 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT ELECTRICITY BOARD

Versus

NUTAN GUJ. VIJ KARMCHARI SANGH

Appearance:

MR VIMAL PATEL for Petitioner

None present for Respondent No. 1

MR PK JANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/06/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. This petition is directed against the award dated 20th June, 1991 passed in Reference (IT) No.427/86 by Industrial Tribunal, Ahmedabad, on a dispute raised by the workmen employed under Gujarat Electricity Board, Vadodara. The dispute pertained to the grievance of the

respondent No.2, herein, i.e. he should be treated as Sr. Assistant (Sr. Accounts Clerk) with effect from 30th November, 1976 and be paid all the consequential benefits as per G.S.O. No.470.

3. It is not in dispute between the parties that the Board, the petitioner herein, had introduced a scheme of giving preferential promotions to the Jr. Clerks who passed the prescribed examination for promotion. The respondent No.2 passed the said examination in the month of October, 1976. The respondent No.2 was given the promotion to the post of Sr. Assistant with effect from 23rd April, 1980, but his claim is for deemed date of promotion on the said post with all the consequential benefits and which was the subject matter of adjudication before the Industrial Tribunal as aforesaid. The Tribunal under the impugned award held that the Board should treat the respondent No.2 as promoted to the post of Sr. Assistant with effect from 16-11-1979 or to pass an appropriate order promoting him to the said post with effect from 16-11-1979. I find that there are serious errors in giving of the dates by the Tribunal. In Para No.8, the Tribunal has stated that it must be held that the concerned workman, herein the respondent No.2, was entitled to be promoted with effect from 16-12-1979. In the operative part, the promotion has been ordered to be given from 16-11-1979. However, the claim of the respondent No.2 for his promotion with effect from 30th November, 1976 was not accepted. This claim was not accepted on the ground that on 30th November, 1976, two Junior Assistants senior to him were also entitled to be promoted because they have also passed the departmental examination earlier than him. To give the proportionate promotion to this category of the Jr. Clerks subsequently a standing order has been passed by the Board wherein roster system had been fixed. 61st vacancy was to be filled in by Jr. Assistants who have passed the departmental examination. There is no dispute that Shri N.B. Brahmhatt was the last person to be promoted from this category on 16-12-1979 and that was the date taken from which the respondent No.2 was held to be entitled or eligible for promotion to the post of Sr. Assistant. The Tribunal has accepted as a fact that in the year 1977 Shri B.V. Saija and Shri N.S. Rai had passed the departmental examination in the month of February and October, 1977 respectively. It is also the finding of the Tribunal that these two persons were senior to the respondent No.2 and in the year 1977 they were entitled to be promoted earlier than the concerned workman. It has also been found as a fact by the Tribunal that in the year 1977, the name of respondent

No.2 was at Serial No.6 of the cadre of Jr. Assistant who had passed the departmental examination till the said year. The Tribunal accepted as a fact further that five other persons senior to the petitioner in the same category have not been promoted till 16-11-1979 or 16-12-1979 whichever date may be taken. Having accepted all these factual aspects, the Tribunal has observed, "Of course, this Tribunal is not concerned with the question whether other five persons senior to the concerned workman should have been promoted prior to 16th December, 1979". It is not the case of the respondent No.2 that five other persons senior to him were not found suitable for promotion after considering their cases for promotion. In the presence of this finding, the Tribunal has committed serious error apparent on the face of the order to ignore the claim of these five senior persons for promotion to the post of Sr. Assistant with effect from 16th November, 1979 and to give the direction to the petitioner to promote the respondent No.2 to the post of Sr. Assistant from 16th November, 1979. This direction given to the petitioner clearly violates the fundamental rights of the five senior persons as conferred under Articles 14 and 16 of the Constitution. They have a preferential claim above the respondent No.2 of promotion on the basis of their seniority and no junior person could have been ordered to be marched over the senior persons. Such a direction, as stated earlier, clearly violates the mandate as contained under Articles 14 and 16 of the Constitution of India. The direction which has been given by the Tribunal for giving the promotion to the respondent No.2 also cannot be allowed to stand as no such direction could have been given. The direction could have been given only for consideration of the case of the concerned workman for promotion by the competent authority.

4. In this Special Civil Application, this Court has passed the order on 16-10-1991, which reads as under:

Heard the learned counsel for the petitioner as regards interim relief. In the facts of the case, it is directed that the direction given by the Tribunal shall be implemented on the condition that the respondent-workman shall file an undertaking in this Court to the effect that in case the respondent-workman loses in this petition, he shall return all the monetary benefits to the petitioner-Board within a period of one month from the date of the final decision of this Court in this petition. Undertaking as stated above shall be filed on or before October

31, 1991. In case the undertaking is not filed by the aforesaid date, it will not be obligatory upon the petitioner to implement the award passed by the Tribunal.

So in compliance of the order of this Court dated 16-10-1991, an order has been passed by the petitioner on 5-5-1993, copy of which has been filed by the respondent No.2 along with his reply to the petition. This order reads as under:

In further reference to award under I.T.

Ref. No.74/87 and in pursuance to the approval of the competent authority, the office order No.EP/I/PRM/SA-DS(A)/89/2660 dtd. 13-3-1989 which was kept in abeyance vide office order No.556 dtd.3-6-1989 is hereby released.

Accordingly he is deemed to have been

promoted to the post of Sr. Asstt. w.e.f 13-9-76 instead of 23-4-80. By considering the deemed date of promotion as above, he will be considered to have been promoted to the post of Dy. Supdt. (A/Cs) w.e.f. 28-2-79 instead of 24-7-81 (as promoted vide office order No.1777 dtd.23-7-81).

No amount for the period 13-9-76 to

27-2-79 towards deemed date of promotion for the cadre of Sr. Asstt. is payable. Arrears for the period 26-2-79 towards deemed date of promotion to the post of Asstt. Accountant (Dy.Supdt.(A/Cs)) shall be payable.

Necessary action for issuance of pay

fixation orders shall be taken by Dy.Secy. (G).

Under this order, the respondent No.2 was deemed to have been promoted to the post of Sr. Assistant with effect from 13-9-1976 instead of 23-4-1980. Considering the deemed date of promotion as above, he was further ordered to be promoted to the post of Dy. Supdt. (A/Cs) w.e.f. 28-2-1979 instead of 24-7-1981. However, an order has been made that no amount for the period from 13-9-76 to 27-2-79 towards the deemed date of promotion for the cadre of Sr. Asstt. is payable. The arrears for the period from 26-9-1979 towards the deemed date of promotion to the post of Assistant Accountant (Dy. Supdt. (A/Cs) shall be payable. This order clearly gives out that the petitioner has given the benefits to

the respondent No.2 more than what it was ordered to be given by the Industrial Tribunal. The respondent No.2 has not challenged the award of the Tribunal, and as such, he has accepted the said award. The order dated 5-5-1993 is otherwise also contrary to the order of the Tribunal. The respondent No.2 has made a claim for promotion to the post of Sr. Assistant from 30th November, 1976, but this claim has been denied by the Tribunal on the ground that on that date, two Junior Assistants senior to him were also entitled to be promoted. The same analogy is applicable to the claim of the respondent No.2 for promotion to the post of Sr. Asstt. from 16th November, 1979 on which date five seniors to him were still waiting for promotion. The claim of the respondent No.2 for promotion should not have been accepted from 16th November, 1979. At the most, the order could have been made for considering the case of respondent No.2 for promotion from deemed date along with the seniors and he could have been given the promotion only on which date he would have been otherwise found entitled after considering his case qua his seniors. So the Tribunal has committed an error, and also the petitioner by giving the benefits to the respondent No.2 from the date from which his claim was not accepted by the Tribunal. This Court will not allow to stand the award which on the face of it is arbitrary. Both the directions to give the promotion to the respondent No.2 as well as from the particular date ignoring the claim of the seniors, certainly are unsustainable and cannot be allowed to stand. The respondent No.2 has been promoted to the post of Sr. Asstt. and to the next higher post from 23rd April, 1980 and 24th July, 1981 respectively. The modification of the award made by the Industrial Tribunal will not cause any reversion from any of the posts i.e. of Sr. Asstt. and Dy.Supt.(A/Cs)/Asstt. Accountant.

5. In the result, this Special Civil Application is allowed in part. The award of the Industrial Tribunal passed in Reference (IT) No.427/86 dated 20-6-1991 is modified in the terms that the petitioner is directed to consider the case of respondent No.2 for promotion to the post of Sr. Asstt. along with five senior persons and he shall be entitled for deemed date of promotion only in case the five senior persons are found unsuitable. The order dated 5-5-1993 stand cancelled in view of this order of this Court. This exercise has to be undertaken by the petitioner within a period of three months from the date of receipt of the copy of this order. However, the claim of respondent No.2 for deemed date of promotion from 30th November, 1976 cannot be allowed to stand as it

is specifically denied by the Tribunal and which part of the award has not been challenged by him. The case of promotion of the respondent No.2 along with his seniors has to be considered for promotion from 16th November, 1979 as ordered by the Tribunal and he shall be entitled for promotion and consequential promotion only in case his seniors are not found suitable. As stated earlier, otherwise also the respondent No.2 has already been promoted so there is no question of reversion. The only question is of deemed date of promotion and consequential benefits. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-